

June 5, 2014

TO: CA BID Alliance

FROM: Kerry Morrison
Hollywood Property Owners Alliance

SUBJECT: Status Update: AB 2618 Legislation and Coalition Expenses

Greetings to the coalition. I hope you all have heard about the successful effort to move AB 2618 through the Assembly. It is poised to enter the Senate within the next couple of weeks. The purpose of this memo is to bring you up to date on this effort, and seek your support as we identify additional funding sources. We breezed through the Assembly with no opposition, and we have made amendments to strengthen the bill before it heads to the Senate. We want everyone to have an opportunity to understand the intent of the Bill so that we can continue on the legislative track with your support. This memo is rather comprehensive, so you can use it to keep your boards in the loop.

If members of the coalition feel the need to have a conference call in addition to this memo, please do not hesitate to communicate with me.

I. Background – why we formed this coalition.

Over the past several years, conflicting court cases have resulted in case law that has created confusion in the PBID community with respect to the definition of general versus special benefits. In addition to the ambiguities that have arisen, the outcomes have compromised the ability of BIDs to provide the traditional array of services we've traditionally associated with BID management plans.

The concept of a "special benefit" did not exist in the original BID statutes that were adopted by the state legislature in the mid-1990's. This label was first introduced in Proposition 218, a constitutional amendment that appeared on the November 1996 ballot. This provision limited the methods by which local governments could create or increase taxes, fees or assessments without taxpayer consent.

Benefit assessment districts (which is what BIDs are) had to become quite exact in determining the special benefit conferred upon a parcel by the special assessment paid. The assessment payer must be assured that their special assessment is not conferring a "general benefit" to the community.

For years, most BID formations proceeded with the engineer's report determining that there was no general benefit conferred. This is why all of us have been careful, either in the formation process, or renewal, to ensure that there is a tight nexus between the assessment paid by a parcel owner and the benefit received.

However, litigation has begun to erode this exclusive special benefit position. Because of several lawsuits that have found that there was a particular general benefit conferred in the formation of a BID, some BIDs have now been formed with a finding of a certain percentage of general benefit.¹

The net effect of not addressing this ambiguity through legislation is that there will be a hodgepodge of interpretations throughout the state, which will further erode the array of services typically provided by BIDs up to this point.

II. Members of CA BID Alliance.

In recognition of this need to resolve this issue legislatively, the CA BID Alliance was formed to advocate for a legislative solution. The founding members of the coalition who provided the initial funding to launch this effort include the following:

Carol Schatz, Central City Association and Downtown Center BID
Kent Smith, LA Fashion District BID
Kraig Kojian, Downtown Long Beach Associates
Kerry Morrison, Hollywood Entertainment District BID -- Hollywood Property Owners Alliance
Karin Flood, Union Square BID
Michael Ault, Downtown Sacramento Partnership
Scott Knies, San Jose Downtown Property Owners Association
Estela Lopez, Downtown Industrial District
Jessica Lall, South Park Business & Community Benefit District
Steve Mulheim, Old Pasadena BID -- Old Pasadena Management Association
Sarah Besley, Sunset & Vine BID -- Central Hollywood Coalition
Blair Besten, Historic Downtown LA BID
Jerry Vorpahl, Power Inn Alliance

III. Legislative Strategy

The most effective way to clarify concepts embedded in the state constitution is via a constitutional amendment. However, constitutional amendments are difficult to pass, given that they require voter approval.

Because judges have had little to rely on when opining on what constitutes general v. special benefit, the strategy we have landed on involves providing guidance in statute. *There is no*

¹ For example, the management plan for the recently approved (2013) Melrose Ave. BID in Los Angeles, articulates a six percent general benefit, which means that \$31,000 out of a \$517,000 budget must be covered by something other than assessment revenue. The Fashion District BID, also renewed in 2013, was required to identify a 4.6 % percent general benefit, resulting in a \$90,000 budget burden that cannot be paid from the BID assessment. In the Arts District case, the court held that the entire budget devoted to economic development and communications was exclusively general benefit, and could not be paid for by the special assessments in the BID.

guarantee that judges will look to state statutes for guidance, but it is a strategy worth pursuing. Further, of the five published rulings that have been issued on this concept, the one that is most reasonable, and aligns with the traditional methods by which benefits have been evaluated by the engineering community over the last 18 years is the approach supported in the Dahms case.²

The legislation drafted effectively codifies the Dahms case. The former Speaker of the Assembly, John Perez, agreed to sponsor the bill. Paul Rohrer, an attorney with Loeb & Loeb has been the principal technical resource. Two legislators signed on as co-authors: Assemblymember Roger Dickinson (D-Sacramento) and Assemblymember Phil Ting (D-San Francisco). State Senator Kevin DeLeon also agreed to lead the effort in the Senate. A legislative advocate was been retained, David Quintana of Gonzalez, Quintana & Hunter LLC.

AB2618, was introduced by Assembly Speaker Perez on February 21, 2014. It was referred to the Assembly Committee on Local Government. The committee approved the Bill unanimously on April 30, 2014. Thereafter, the Bill was considered on the Assembly floor on May 8, 2014 and was approved unanimously. Thank you to all who help organize letters of support and traveled to Sacramento to provide testimony during Assembly hearings.³

During the Assembly process, there were some amendments made to the original language that we believe weakened the bill. Now that the Bill has been sent to the Senate for its approval and/or amendment, we have revisited the language in the Bill and incorporated changes so that the version sent to Senate is as strong as possible.

The amended bill is attached to this memo.

The Bill has been sent to the Senate Committee on Government and Finance, and a Committee hearing will take place on June 18th. After Committee, the Bill will be sent to the Senate Floor for a vote and approval. Since we have made changes to the Bill since it left the Assembly, it will then return to Assembly for concurrence. We have until August 31st to accomplish all this.

² *Dahms v. Downtown Pomona* (2009). In this case, the court took a more expansive view toward the general v. special benefits question and ruled that as long as the special benefits were conferred to the assessment payers, the fact that there might be some concomitant general benefit is not of concern.

³ Letters of support were submitted to the Speaker's office from the following organizations and individuals: Avison Young Real Estate, Central City Association of LA, Central City East Association, Central Hollywood Coalition, Chrysalis, Downtown Center BID, Downtown Industrial District BIA, Downtown Long Beach Associates, Downtown Sacramento Partnership, Gateway to LA BID, Historic Core BID, Hollywood Chamber of Commerce, Hollywood Property Owners Alliance, Hollywood United Methodist Church, Larchmont Village BID, Midtown Business Association, Old Pasadena Management Association, Power Inn Alliance, McDonald's Hollywood, San Diego Regional Chamber of Commerce, Sunset & Vine BID, Long Beach Area Chamber of Commerce, The River District, Stockton Blvd Partnership, Union Square BID, Wilshire Center Business Improvement Corporation. Individuals who flew to Sacramento to be present or testify at the Local Government Committee included: Carol Schatz, Michael Ault, Jessica Lall, Laurie Hughes and Sarah Besley.

Finally, we will then lobby the Governor's office to ensure his support when the Bill reaches his desk for signature.

IV. Financial Update and Next Steps

As we prepare to enter the Senate with AB 2618, we have two tasks ahead of us. First, we must continue to build support for this bill, not only among more BID organizations, but also among other key statewide organizations with vested interest in reducing confusion in assessment law. We will be reaching out to League of CA Cities, CAL Chamber and others. We also ask that our CA BID Alliance members continue to reach out to your elected state officials to keep them informed of the bill, and of your support. Finally, and most important, we will need to raise additional funds to complete this job.

In February, we notified you that we anticipated our efforts to cost approximately \$65,000. The anticipated expenses were as follows:

- Technical assistance (draft legislation and reviews) -- \$20,000
- Legislative advocacy (\$4,500/month x 6 months) -- \$30,000
- Contingency and coalition building -- \$15,000

To date, we have raised \$44,000 from 13 BIDs throughout the state. Initially, the ask was .015 percent of one's assessment budget. We approached all BIDs with budgets >\$1.2M.

Contributor -	Amount
Downtown Center BID	8,475.00
LA Fashion District BID	5,521.00
Downtown Long Beach Associates	1,500.00
Hollywood Entertainment District BID -- Hollywood Property Owners Alliance	5,100.00
Union Square BID	4,650.00
Downtown Sacramento Partnership	3,870.00
San Jose Downtown Property Owners Association	2,900.00
Downtown Industrial District	2,850.00
South Park Business & Community Benefit District	2,460.00
Old Pasadena BID -- Old Pasadena Management Association	2,320.00
Sunset & Vine BID -- Central Hollywood Coalition	2,100.00
Hollywood Media District	1,800.00
Power Inn Alliance (Sacramento)	500.00
TOTAL DEPOSITS	44,046.00

At this time, and given the status of the bill, we have learned that our \$65,000 anticipated budget was too conservative. We believe that our expenses will be approximately \$85,000. Additional legal expenses were incurred to accommodate changes required or requested by counsel to the Assembly speaker, Legislative Counsel, City of Los Angeles, and the Howard Jarvis Taxpayers Association. Therefore, we are reaching out to smaller BIDs to receive any contributions that are possible. We are also looking to our original founding partners, who contributed out of their 2013 budgets, to consider helping us finish this job out of your 2014 budgets.

This revised budget breaks down as follows.

- Technical assistance -- \$51,000
- Legislative advocacy -- \$34,000
- Contingency - \$5,000

While we understand that supporting this legislative advocacy effort may require some sacrifice, please consider the importance of the investment *now* to forestall the future burden associated with the current state of confusion that exists in the state. We are working hard to secure passage of a bill that will reduce this ambiguity. Absent this bill, slowly but surely, each of our BIDs can expect to face challenges in our identification of the special benefits that accrue to our assessment payers. This is a collaborative investment to mitigate against costly litigation, liberal definitions of general benefits and, most tragically, BID dissolution, as was the case in the Arts District BID in 2013.

Please do not hesitate to contact me with any questions. 323-463-6767.

CA BID Alliance
Campaign to secure passage of AB 2618 (Perez)

Contributor - Assembly effort	Contributions to date
Downtown Center BID	8,475
LA Fashion District BID	5,521
Downtown Long Beach Associates	1,500
Hollywood Entertainment District BID	5,100
Union Square BID	4,650
Downtown Sacramento Partnership	3,870
San Jose Downtown POA	2,900
Downtown Industrial District	2,850
South Park Business & CBD	2,460
Old Pasadena BID	2,320
Sunset & Vine BID	2,100
Hollywood Media District	1,800
Power Inn Alliance (Sacramento)	500
Raised to Date (June 2014)	44,046
Projected Budget	85,000
Current Fundraising Need	40,954

CA BID Alliance Partners:

For this final fundraising round, we would ask all the smaller BIDs to give on average \$500. To arrive at an amount, note that the original donation formula was .015% of budget. We hope to relieve the state's larger BIDs of the burden of a double-down contribution. Any funds not spent will be returned proportionate to giving.



Smaller Budget BIDs & Requested Contribution			
Arlington	500	Historic Waterfront District (San Pedro)	500
B.L.Q. Pico Boulevard PBID	500	Jack London	500
Bixby Knolls	500	Japantown	500
Brentwood Village PBID	500	Koreatown/Northgate	500
Burlingame Downtown	500	Lake Merritt/Uptown	500
Central Market	500	Lakeshore Avenue	500
Century City	500	Lakeshore PBID	500
Chatsworth	500	Larchmont Village	500
Chico	500	Laurel	500
Citywide	500	Lincoln Heights Business and CBD	500
Civic Center	500	Lincoln Heights Industrial Zone	500
College Area	500	Little Tokyo	500
Del Paso Blvd	500	Livermore	500
Diamond	500	Los Feliz Village	500
Downtown Berkeley	500	Mack Road	500
Downtown Burbank	500	Main Street Hanford	500
Downtown Center	500	Marine Avenue	500
Downtown Fresno	500	Midtown Sacramento	500
Downtown Hollister	500	Mission Miracle Mile	500
Downtown Huntington Beach	500	Modesto Downtown Imprvmnt. District	500
Downtown Lancaster	500	Monterey Park	500
Downtown Napa	500	Noe Valley	500
Downtown Oakland	500	North Franklin	500
Downtown Petaluma	500	North Hollywood Transit	500
Downtown Placerville	500	North of Market/Tenderloin	500
Downtown Plaza BIA	500	North Park/Main Street	500
Downtown Pomona	500	North Shattuck	500
Downtown San Diego	500	North Texas Street	500
Downtown Stockton	500	Oak Park	500
Downtown Vallejo	500	Ocean Avenue	500
Downtown Ventura	500	Old Granada Village	500
East Anaheim Street	500	Panorama City	500
East Hollywood	500	Playhouse District	500
El Cajon	500	R Street	500
Encino Commons	500	Richmond Downtown	500
Figueroa Corridor	500	River District	500
Fisherman's Wharf	500	San Pedro Waterfront	500
Florin Road	500	South LA Industrial Tract (Goodyear)	500
Fortuna	500	Stockton Blvd PBID - Sacramento	500
Fourth Street	500	Stockton Miracle Mile	500
Franklin Blvd.	500	Studio City	500
Fruitvale	500	Sunrise Market Place	500
Fulton Avenue	500	Sylmar	500
Gateway to LA	500	Telegraph Hill	500
Grass Valley	500	Temescal Telegraph	500
Greater Broadway	500	Uptown North Long Beach	500
Greater Chinatown	500	Village at Sherman Oaks	500
Greater Leimert Park Village/Crenshaw Corridor	500	Westchester	500
Gridley	500	Westwood	500
Highland Park	500	Willow Glen	500
Historic Downtown	500	Wilmington Commercial District	500
Historic Folsom	500	Wilshire Center	500
Historic Old Town Canoga Park	500	Yerba Buena	500
Historic Uptown Susanville	500		
			TOTAL 53,500

SENATE GOVERNANCE & FINANCE COMMITTEE
Senator Lois Wolk, Chair

BILL NO: AB 2618
AUTHOR: John A. Pérez
VERSION: 6/11/14
CONSULTANT: Weinberger

HEARING: 6/18/14
FISCAL: No
TAX LEVY: No

PROPERTY AND BUSINESS IMPROVEMENT DISTRICTS

Amends the Property and Business Improvement District Law of 1994 to conform several of its provisions to constitutional requirements established by Proposition 218 (1996).

Background and Existing Law

Proposition 218 (1996) requires owners of real property to approve benefit assessments in a weighted ballot election. Property owners vote in proportion to their proposed assessments, which reflect how much their property benefits from the proposed public works or public services. The courts have said that assessments on businesses, as opposed to real property, are not subject to Proposition 218's provisions.

The Property and Business Improvement District (PBID) Law of 1994 allows property owners to petition a city or county to set up an improvement district and levy assessments on property owners to pay for promotional activities as well as for physical improvements, subject to Proposition 218's approval requirements (AB 3754, Caldera, 1994). Local officials also may use the 1994 Law to assess business owners, provided that they follow statutory notice, hearing, and protest procedures (AB 1208, Silva, 2007).

Local officials and other PBID stakeholders want some of the 1994 Law's provisions relating to assessments on real property to more clearly conform to Proposition 218's requirements.

Proposed Law

Assembly Bill 2618 defines a "property-based assessment" as any assessment made pursuant to the Property and Business Improvement District Law of 1994 upon real property. **Assembly Bill 2618** defines a "property-based district" as any district in which a city levies a property-based assessment.

Proposition 218 amended the California Constitution to define an assessment as any levy or charge upon real property by a local agency for a special benefit con-

ferred upon the real property. The Constitution defines a special benefit as a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large and specifies that general enhancement of property value does not constitute special benefit. **Assembly Bill 2618** defines "special benefit," for purposes of a property-based improvement district, as a particular and distinct benefit over and above general benefits conferred on real property located in a district or to the public at large. Special benefit includes incidental, secondary or collateral effects that arise from the improvements, maintenance, or activities of property-based districts even if they benefit property or persons not assessed. The bill specifies that special benefit excludes general enhancement of property value.

Assembly Bill 2618 defines "general benefit," for purposes of a property-based improvement district, as any benefit that is not a "special benefit," as defined in statute.

Assembly Bill 2618 specifies that property-based assessments must be levied in proportion to the special benefit conferred on the real property, and must not exceed the reasonable cost of the proportional special benefit conferred on the real property. The bill specifies that costs associated with general benefits provided to real property may not be included in the amounts assessed.

As part of the process to form an improvement district, the 1994 Law requires a city to develop a management district plan. That plan must contain specified elements, including a statement of the methodology for imposing the district's expenses upon benefited real property or businesses in proportion to the benefit received by the property or business. **Assembly Bill 2618** requires that, in a property-based district, the proportionate special benefit derived by each identified parcel must be determined exclusively in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the activities. **Assembly Bill 2618** prohibits an assessment on any parcel from exceeding the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and a property-based district must separate any general benefits from the special benefits conferred on a parcel. The bill directs that specified publicly-owned parcels within a property-based district are not exempt from assessment unless the governmental entity can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.

Assembly Bill 2618 prohibits the value of any incidental, secondary or collateral effects that arise from a district's improvements, maintenance, or activities that benefit property or persons not assessed from being deducted from the entirety of the cost of any special benefit or affect the proportionate special benefit derived by each identified parcel.

Assembly Bill 2618 requires that a management district plan for a property-based district must include:

- The total amount of all special benefits to be conferred on the properties within the property-based district.
- The total amount of general benefit, if any.
- A detailed engineer's report prepared by a registered professional engineer certified by the State of California supporting all assessments contemplated by the management district plan.

Assembly Bill 2618 requires that a resolution of formation adopted to form a property-based district must include:

- A finding that the property within the district will receive a special benefit from improvements, maintenance, and activities funded by the proposed assessments.
- The total amount of all special benefits to be conferred on the properties within the property-based district.

The 1994 Law declares that property zoned solely for residential use is conclusively presumed not to benefit from improvements or services funded by improvement districts' assessments and exempts those properties from those assessments. **Assembly Bill 2618** specifies that only properties zoned solely for no more than four residential units that are used solely for residential purposes are presumed not to receive special benefit from improvement districts' improvements, maintenance, and activities and are exempt from districts' assessments.

Assembly Bill 2618 replaces several references to improvements and activities provided in a district with references to improvements, maintenance, and activities provided in a district.

Assembly Bill 2618 makes additional technical, non-substantive changes to current law.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. Because the PBID Law does not specifically address the distinction between special and general benefits, Proposition 218's addition of Article XIIIID to the California Constitution created confusion around issues such as district formation, the levying of assessments and the permissible functions of PBIDs. Consequently, cities throughout the state are using divergent methodologies to form PBIDs and impose assessments. Litigation arising from this lack of

clarity threatens the viability of all of California's PBIDs and the employment, public health and safety, and economic development benefits they create. AB 2618 will help ensure that PBIDs comply with Article XIID by providing PBIDs, cities, and the courts with a consistent methodology for determining the amount of "special" benefits associated with PBIDs. Without AB 2618's clarifications, PBIDs will remain subject to litigation challenges and the entire state may be subject to future court decisions that severely impede - or even eliminate - PBIDs.

2. Conflict avoidance. AB 2618 amends some of the same code sections that would be amended by SB 1462, the Senate Governance & Finance Committee's local government omnibus bill. If both bills are signed into law, the changes made by the bill that's chaptered first would be wiped out by the changes made by the bill that's chaptered second. To avoid the possibility that AB 2618 could "chapter-out" provisions of SB 1462, *the Committee may wish to consider amending AB 2618 to include the amendments that SB 1462 makes to code sections that are being amended by both bills.*

Assembly Actions

Assembly Local Government Committee:	9-0
Assembly Floor:	74-0

Support and Opposition (6/12/14)

Support: Avison Young; Central City Association; Central City East Association; Central Hollywood Coalition; Chrysalis; City of San Diego; Downtown Center Business Improvement District; Downtown Industrial District Business Improvement District; Downtown Long Beach Associates; Downtown Sacramento Partnership; Downtown San Diego Partnership; Gateway to L.A. BID; Historic Core Business Improvement District; Hollywood Chamber of Commerce; Hollywood Property Owners Alliance; Hollywood United Methodist Church; LA Fashion District Business Improvement District; Larchmont Village Property Owners Association; Mack Road Partnership; Midtown Business Association; Old Pasadena Management District; Paramount Contractors & Developers; Power Inn Alliance; S. Carol Massie, Inc. dba McDonalds Hollywood; San Diego Regional Chamber of Commerce; San Pedro Property Owners' Alliance; South Park Business Improvement District; Studio City Improvement Association; Sunset and Vine BID; The Chamber Long Beach Area Chamber of Commerce; The River District; The Stockton Blvd Partnership; Union Square Business Improvement District; Uptown Property and Community Association; Wilshire Center Business Improvement Corporation.

Opposition: Unknown.